

Rule 7. The Indictment and the Information

(a) **WHEN USED.** An offense which may be punished by imprisonment for a term exceeding one year must be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or information. An information may be filed without leave of court, but in the case of a person arrested without a warrant, the person must be brought before the court and charged forthwith by information or complaint or the person must be discharged.

(b) **WAIVING INDICTMENT.** An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant—in open court and after being advised of the nature of the charge and of the defendant's rights—waives prosecution by indictment.

(c) **NATURE AND CONTENTS.**

(1) *In General.* The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. For purposes of an indictment referred to in D.C. Code § 23-331 (2012 Repl.), for which the defendant's true name is unknown and the defendant's identity has been established with reasonable certainty by forensic testing of DNA evidence as described in that statute, it shall be sufficient for the indictment to be by fictitious name.

(2) *Citation Error.* Unless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction.

(d) **SURPLUSAGE.** Upon the defendant's motion, the court may strike surplusage from the indictment or information.

(e) **AMENDING AN INFORMATION.** Unless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended at any time before the verdict or finding.

(f) **BILL OF PARTICULARS.** The court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 14 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires.

COMMENT TO 2017 AMENDMENTS

In accordance with the 2009 amendment to the federal rule, the 10-day time period was expanded to 14 days—an amendment that reflects the time-calculation changes made to Rule 45.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) retains the structure and content of the former Superior Court rule, and rejects the structure and content of the federal rule as not locally applicable for the following reasons.

First, paragraph (a) defines when an indictment is used in relation to the length of the penalty, not whether the offense is termed a felony or misdemeanor. See D.C. Code § 23-301 (2012 Repl.) (prosecution by indictment for offenses punishable by imprisonment for a term exceeding one year). An offense denominated a felony under District of Columbia law may be punished by a term of imprisonment of less than one year. See D.C. Code § 16-1024 (2012 Repl.) (parental kidnapping). No indictment would be required by virtue of the penalty.

Second, paragraph (a) does not adopt the provision of the federal rule that excludes criminal contempt from prosecution by indictment. Where a District of Columbia statute authorizes punishment for criminal contempt, an indictment or information may be required, depending on the maximum penalty. See D.C. Code § 23-1329 (c) (2012 Repl.) (criminal contempt for violating release conditions, penalty not to exceed six months); D.C. Code § 11-944 (2012 Repl.) (criminal contempt, penalty not specified); D.C. Code § 23-301 (2012 Repl.) (prosecution by indictment for offenses punishable by imprisonment for a term exceeding one year). This modification is not intended to have any impact on contempt proceedings under Rule 42.

Third, paragraph (a) omits references to offenses punishable by death. The District of Columbia has no death penalty.

Finally, paragraph (a) does not refer to *Federal Rule 58(b)(1)* respecting misdemeanors since that rule has no local counterpart.

Subparagraph (c)(1) reflects local law regarding DNA indictments.

Subparagraph (c)(2) of the federal rule dealing with criminal forfeitures is omitted. Proceedings for the forfeiture of property in the Superior Court are brought pursuant to Superior Court Civil Rule 71A-I.